

[Committee Print]

AUGUST 3, 1999

SHOWING THE TEXT OF H.R. 1714
AS AMENDED BY THE SUBCOMMITTEE ON
FINANCE AND HAZARDOUS MATERIALS AND
THE SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Electronic Signatures
3 in Global and National Commerce Act”.

4 **TITLE I—VALIDITY OF ELEC-**
5 **TRONIC RECORDS AND SIG-**
6 **NATURES FOR COMMERCE**

7 **SEC. 101. GENERAL RULE OF VALIDITY.**

8 (a) GENERAL RULE.—With respect to any contract
9 or agreement entered into in or affecting interstate or for-
10 eign commerce, notwithstanding any statute, regulation,
11 or other rule of law, the legal effect, validity, or enforce-
12 ability of such contract or agreement shall not be denied—

13 (1) on the ground that the contract or agree-
14 ment is not in writing if the contract or agreement
15 is an electronic record; or

16 (2) on the ground that the contract or agree-
17 ment is not signed or is not affirmed by a signature

1 if the contract or agreement is signed or affirmed by
2 an electronic signature.

3 (b) AUTONOMY OF PARTIES IN COMMERCE.—With
4 respect to any contract or agreement entered into in or
5 affecting interstate or foreign commerce, the parties to
6 such contract or agreement may establish requirements re-
7 garding the use of electronic records and electronic signa-
8 tures acceptable to such parties.

9 **SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL**
10 **RULE.**

11 (a) IN GENERAL.—Except as provided in subsection
12 (b), a Federal or State statute, regulation, or other rule
13 of law enacted or adopted after the date of enactment of
14 this Act may modify, limit, or supersede the provisions of
15 section 101 if such statute, regulation, or rule of law—

16 (1)(A) constitutes an enactment or adoption of
17 the Uniform Electronic Transaction Act as reported
18 to the State legislatures by the National Conference
19 of Commissioners on Uniform State Laws; or

20 (B) specifies the alternative procedures or re-
21 quirements for the use of electronic records or elec-
22 tronic signatures to establish the legal validity of
23 contracts or agreements;

1 (2) in the case of a State statute, regulation, or
2 other rule of law, is enacted or adopted within 4
3 years after the date of enactment of this Act; and

4 (3) makes specific reference to the provisions of
5 section 101.

6 (b) EFFECT ON OTHER LAWS.—A State statute, reg-
7 ulation, or other rule of law (including an insurance stat-
8 ute, regulation, or rule of law) that modifies, limits, or
9 supersedes section 101 shall not be effective to the extent
10 that such statute, regulation, or rule—

11 (1) discriminates in favor of or against a spe-
12 cific technology, method, or technique of creating,
13 storing, generating, receiving, communicating, or au-
14 thenticating electronic records or electronic signa-
15 tures;

16 (2) discriminates in favor of or against a spe-
17 cific type or size of entity engaged in the business
18 of facilitating the use of electronic records or elec-
19 tronic signatures;

20 (3) is not based on specific and publicly avail-
21 able criteria; or

22 (4) is otherwise inconsistent with the provisions
23 of section 101.

24 (c) ACTIONS TO ENJOIN.—Whenever it shall appear
25 to the Secretary of Commerce that a State has enacted

1 or adopted a statute, regulation, or other law that is pro-
2 hibited by subsection (b), the Secretary may bring an ac-
3 tion to enjoin the enforcement of such statute, regulation,
4 or rule, and upon a proper showing a permanent or tem-
5 porary injunction or restraining order shall be granted
6 without bond.

7 **SEC. 103. SPECIFIC EXCLUSIONS.**

8 The provisions of section 101 shall not apply to—

9 (1) a statute, regulation, or other rule of law
10 governing the creation and execution of wills, codi-
11 cils, or testamentary trusts; or

12 (2) a statute, regulation, or other rule of law
13 governing adoption, divorce, or other matters of
14 family law.

15 **SEC. 104. DEFINITIONS.**

16 For purposes of this title:

17 (1) **ELECTRONIC RECORD.**—The term “elec-
18 tronic record” means a writing, document, or other
19 record created, stored, generated, received, or com-
20 municated by electronic means.

21 (2) **ELECTRONIC SIGNATURE.**—The term “elec-
22 tronic signature” means information or data in elec-
23 tronic form, attached to or logically associated with
24 an electronic record, that—

1 (A) is intended by the parties to signify
2 agreement to a contract or agreement; and

3 (B) is capable of verifying the identity of
4 the person using the signature.

5 (3) ELECTRONIC.—The term “electronic”
6 means of or relating to technology having electrical,
7 digital, magnetic, optical, electromagnetic, or similar
8 capabilities regardless of medium.

9 **TITLE II—DEVELOPMENT AND**
10 **ADOPTION OF ELECTRONIC**
11 **SIGNATURE PRODUCTS AND**
12 **SERVICES**

13 **SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN**
14 **INTERSTATE AND FOREIGN COMMERCE.**

15 (a) INQUIRY REGARDING IMPEDIMENTS TO COM-
16 MERCE.—

17 (1) INQUIRIES REQUIRED.—Within 90 days
18 after the date of the enactment of this Act, and an-
19 nually thereafter, the Secretary of Commerce, acting
20 through the Assistant Secretary for Communications
21 and Information, shall complete an inquiry to—

22 (A) identify any domestic and foreign im-
23 pediments to commerce in electronic signature
24 products and services and the manners in which
25 and extent to which such impediments inhibit

1 the development of interstate and foreign com-
2 merce;

3 (B) identify constraints imposed by foreign
4 nations or international organizations that con-
5 stitute barriers to providers of electronic signa-
6 ture products or services; and

7 (C) identify the degree to which other na-
8 tions and international organizations are com-
9 plying with the principles in subsection (b)(2).

10 (2) SUBMISSION.—The Secretary shall submit a
11 report to the Congress regarding the results of each
12 such inquiry within 90 days after the conclusion of
13 such inquiry.

14 (b) PROMOTION OF ELECTRONIC SIGNATURES.—

15 (1) REQUIRED ACTIONS.—The Secretary of
16 Commerce, acting through the Assistant Secretary
17 for Communications and Information, shall promote
18 the acceptance and use, on an international basis, of
19 electronic signatures in accordance with the prin-
20 ciples specified in paragraph (2) and in a manner
21 consistent with section 101 of this Act. The Sec-
22 retary of Commerce shall take all actions necessary
23 in a manner consistent with such principles to elimi-
24 nate or reduce, to the maximum extent possible, the
25 impediments to commerce in electronic signatures,

1 including those identified in the inquiries under sub-
2 section (a) for the purpose of facilitating the devel-
3 opment of interstate and foreign commerce.

4 (2) PRINCIPLES.—The principles specified in
5 this paragraph are the following:

6 (A) Free markets and self-regulation, rath-
7 er than government standard-setting or rules,
8 should govern the development and use of elec-
9 tronic records and electronic signatures.

10 (B) Neutrality and nondiscrimination
11 should be observed among providers of and
12 technologies for electronic records and elec-
13 tronic signatures.

14 (C) Parties to a transaction should be per-
15 mitted to establish requirements regarding the
16 use of electronic records and electronic signa-
17 tures acceptable to such parties.

18 (D) Electronic records and electronic sig-
19 natures in a form acceptable to the parties
20 should not be denied legal effect, validity, or en-
21 forceability on the ground that they are not in
22 writing.

23 (E) De jure or de facto imposition of
24 standards on private industry through foreign
25 adoption of regulations or policies with respect

1 to electronic records and electronic signatures
2 should be avoided.

3 (c) FOLLOWUP STUDY.—Within 3 years after the
4 date of enactment of this Act, the Secretary of Commerce,
5 acting through the Assistant Secretary for Communica-
6 tions and Information, shall conduct an inquiry regarding
7 any State statutes, regulations, or other rules of law en-
8 acted or adopted after such date of enactment pursuant
9 to section 102(a), and the extent to which such statutes,
10 regulations, and rules comply with section 102(b). The
11 Secretary shall submit a report to the Congress regarding
12 the results of such inquiry by the conclusion of such 3-
13 year period and such report shall identify any actions
14 taken by the Secretary pursuant to section 102(c) and
15 subsection (b) of this section.

16 (d) CONSULTATION.—In conducting the activities re-
17 quired by this section, the Secretary shall consult with
18 users and providers of electronic signature products and
19 services and other interested persons.

20 (e) PRIVACY.—Nothing in this section shall be con-
21 strued to require the Secretary or the Assistant Secretary
22 to take any action that would adversely affect the privacy
23 of consumers.

24 (f) DEFINITIONS.—As used in this section, the terms
25 “electronic record” and “electronic signature” have the

1 meanings provided in section 104 of the Electronic Signa-
2 tures in Global and National Commerce Act.

3 **TITLE III—USE OF ELECTRONIC**
4 **RECORDS AND SIGNATURES**
5 **UNDER FEDERAL SECURITIES**
6 **LAW**

7 **SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS**
8 **AND SIGNATURES.**

9 Section 3 of the Securities Exchange Act of 1934 (15
10 U.S.C. 78c) is amended by adding at the end the following
11 new subsection:

12 “(h) REFERENCES TO WRITTEN RECORDS AND SIG-
13 NATURES.—

14 “(1) GENERAL VALIDITY OF ELECTRONIC
15 RECORDS AND SIGNATURES FOR SECURITIES
16 LAWS.—Except as otherwise provided in this
17 subsection—

18 “(A) if a contract, agreement, or record
19 (as defined in subsection (a)(37)) is required by
20 the securities laws, and is required by other
21 Federal or State statute, regulation, or other
22 rule of law to be in writing, or is required to
23 be authenticated by means of an instrument in
24 writing, the legal effect, validity, or enforce-
25 ability of such contract, agreement, or record

1 shall not be denied on the ground that the in-
2 strument is not in writing if the instrument is
3 an electronic record;

4 “(B) if a contract, agreement, or record is
5 required by the securities laws, and is required
6 by other Federal or State statute, regulation, or
7 other rule of law to be signed, the legal effect,
8 validity, or enforceability of such contract,
9 agreement, or record shall not be denied on the
10 ground that such contract, agreement, or record
11 is not signed or is not affirmed by a signature
12 if the contract, agreement, or record is signed
13 or affirmed by an electronic signature; and

14 “(C) if a broker, dealer, transfer agent, in-
15 vestment adviser, or investment company enters
16 into a contract or agreement with, or accepts a
17 record from, a customer or other counterparty,
18 such broker, dealer, transfer agent, investment
19 adviser, or investment company may accept and
20 rely upon an electronic signature on such con-
21 tract, agreement, or record, and such electronic
22 signature shall not be denied legal effect, valid-
23 ity, or enforceability because it is an electronic
24 signature.

25 “(2) IMPLEMENTATION.—

1 “(A) REGULATIONS.—The Commission
2 may prescribe such regulations as may be nec-
3 essary to carry out this subsection consistent
4 with the public interest and the protection of
5 investors.

6 “(B) NONDISCRIMINATION.—The regula-
7 tions prescribed by the Commission under sub-
8 paragraph (A) shall not—

9 “(i) discriminate in favor of or against
10 a specific technology, method, or technique
11 of creating, storing, generating, receiving,
12 communicating, or authenticating elec-
13 tronic records or electronic signatures; or

14 “(ii) discriminate in favor of or
15 against a specific type or size of entity en-
16 gaged in the business of facilitating the
17 use of electronic records or electronic sig-
18 natures.

19 “(3) EXCEPTIONS.—Notwithstanding any other
20 provision of this subsection—

21 “(A) the Commission, an appropriate regu-
22 latory agency, or a self-regulatory organization
23 may require that records be filed in a specified
24 format or formats if the records are required to
25 be submitted to the Commission, an appropriate

1 regulatory agency, or a self-regulatory organiza-
2 tion, respectively; and

3 “(B) the Commission may require that
4 contracts, agreements, or records relating to
5 purchases and sales, or establishing accounts
6 for conducting purchases and sales, of penny
7 stocks be manually signed, and may require
8 such manual signatures with respect to trans-
9 actions in similar securities if the Commission
10 determines that such securities are susceptible
11 to fraud and that such fraud would be deterred
12 or prevented by requiring manual signatures.

13 “(4) DEFINITIONS.—As used in this subsection,
14 the terms ‘electronic record’ and ‘electronic signa-
15 ture’ have the meanings provided in section 104 of
16 the Electronic Signatures in Global and National
17 Commerce Act.”.